

# **GEOGRAPHIC STRATEGIES LLC**

## **THE CURRENT REDISTRICTING REPORT**

**Thomas B. Hofeller, Ph.D.**

February 14, 2012

The energy and resources poured into last year's gubernatorial and legislative races are paying large dividends in the ongoing redistricting process now just past 4/5ths completion in preparation for next year's elections. Not only did the GOP make major gains in control of legislatures and individual chambers, but the tide of victory combined with this year's elections and party switches increased our control of the process. The GOP was in full control of congressional redistricting in states containing 217 districts – as compared to the Democrat's 44. GOP control was a key factor in states both gaining and losing seats in the reapportionment of the US House as a result of population shifts mandated by the 2010 Decennial Census. This allowed Republicans to build new GOP seats in gaining states and to force the Democrats to take the "hit" in states where seats were lost. It also allowed adjusts many other seats to shore up districts already GOP-held in both Congress and state legislatures.

Beginning with the arrival of the census data last February, Republicans and Democrats have been engaged in redistricting battle significantly influencing future control of the US House of Representatives and state legislative chambers across the nation. Legislative maps have been enacted in 38 states and 38 of the 43 states which redraw congressional boundaries (seven states only contain one district). We now know where the boundaries for this year's election will be for 358 of the 435 (82.30%) U. S. House seats. My assessment of the results so far, along with the projection of the final outcome of GOP and Democratic congressional gains due to redistricting is attached,.

So far the two parties are each holding their own with Democrats doing damage to the GOP in states they control, and Republicans drawing lines to their own advantage where they are in charge. Some redistricting plans are, or will be, challenged in court, and other states are, or could possibly be, deadlocked and will also end up in court. As was the case in the 2000 redistricting cycle, success or failure in court will have a crucial impact on the final outcome. So far, in states where litigation costs are not being provided by the taxpayers, the Democrats are much better funded than the GOP. Democrats have a large multi-million dollar national litigation fund (Democrat National Redistricting Trust) and in some states' GOP stakeholders are having difficulty funding their litigation efforts; and are litigating on a shoestring. As of this date Minnesota is in deadlock litigation and prospects are high that New York and Virginia will soon follow.

Even though 38 states have enacted plans, under the provisions of Section 5 of the Federal Voting Rights Act (VRA), sixteen states must have their redistricting lines precleared either by the Federal District Court for the District of Columbia (DCDC), or by the US Department of Justice (DOJ) before they can be used for elections. So far DOJ has precleared enacted congressional and legislative maps for Alabama (congressional only), Alaska, California, Georgia, Louisiana, Michigan, North Carolina, South Carolina and South Dakota. Virginia's legislative maps precleared last year. New Hampshire's maps will have no trouble with preclearance. Mississippi's will hold 2012 elections under a map imposed by a federal court which does not require preclearance, and has not yet completed legislative maps. Alabama's congressional map has precleared, but, with no elections this year, its legislative lines are not yet enacted.

Texas preclearance awaits decision from the DCDC. Arizona, Florida and Virginia (congressional only) await submission. New York has yet to redistrict. If preclearance is not forthcoming from DOJ, these remaps may end up on court. Voting Rights Act litigation is extremely complex and expensive, and some GOP stakeholders will experience difficulty funding their VRA litigation.

Fifteen states, Alabama, Arkansas, Connecticut, Hawaii, Idaho, Kentucky, Maine, Mississippi, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, West Virginia and Wisconsin, have enacted new congressional maps which have minor adjustments to their previous plans. The remaining twenty-four states, with more than one district, which have enacted plans, are briefly discussed below (as are CT, NM and WV):

**California** (53 seats) – For the first time since statehood, California did not gain a US House seat due to reapportionment. This is also the first time that California maps have been enacted by a commission. In 2001, California’s legislative and congressional districts were drawn as a result of a “sweetheart” deal between the two parties. This resulted in districts with bizarre shapes entirely designed to eliminate competition between the two parties’ candidates as much as possible. Only one of California’s 53 congressional seats changed hands in last decade’s elections.

All this was unraveled by the Commission’s maps with the result being more regularly-shaped districts as well as a somewhat increased level of partisan competitiveness in some of the new districts. Since GOP voting strength is low in California, the Democrats ended up with more safe districts and more of their incumbents found “safe homes” in the new plan. It did not hurt them that they were blatant in their subversion of the Commission’s Democrat and supposedly “non partisan” members. Republicans had two sets of incumbents placed together with no apparent new home for the odd-man out, and one incumbent placed alone in a solidly Democratic district. Many pundits are scoring the GOP a 3 to 3½ loss in congressional seats, although GOP handicappers see more opportunities in the plan.

All efforts to challenge the Commission's maps have been rebuffed in California's Supreme Court.

**Texas** (36 seats) – Due to a phenomenal population growth rate, Texas gained 4 new seats in the 2010 Reapportionment. The GOP has full control over both congressional and legislative redistricting, a fact that should have resulted in a smooth path for significant GOP gains. Texas remaps, however, are subject to the preclearance provisions of the VRA. Because a very large portion of the population gain was due to growth in the Latino community, Latinos pushed for increased representation in both the Texas House of Representatives and the congressional delegation. The Democrats were also worried about preserving their remaining non-Hispanic white incumbents, and were more than likely to challenge the maps in any event.

The GOP-controlled Texas legislature enacted extremely aggressive plans and, as a result, Texas now finds itself embroiled in VRA litigation in two federal district courts; one case in the DC district court, which awaits a decision this month, seeking to get its maps precleared, and a second case in San Antonio where plaintiffs urged the court to declare that Texas did not create a sufficient number of new Latino districts. Plaintiffs further proposed that the San Antonio court should impose its own interim maps for the 2012 election, which it did in November.

In response, the Texas Attorney General successfully requested the U.S. Supreme Court to issue a stay to block the interim maps. This, in turn, motivated the DC district court to move more quickly to schedule its Section 5 preclearance trial, which has been completed.

The Supreme Court in its January 9<sup>th</sup> hearing seemed to indicate that it was not entirely pleased with the interim plans created by the San Antonio Court. The Supreme Court also questioned whether or not the already delayed primary could be moved to an even later date, giving time for the DCDC to complete its Section 5 evaluation. In a surprising swiftly issued opinion on January 20<sup>th</sup>, the Supreme Court nixed the San Antonio Court's interim maps and ordered that court to try again. When redrafting the interim map, the San Antonio Court must give deference to the newly enacted maps in those districts which have.

The San Antonio Court is still dithering about a interim plan, but may be heavily influenced by a DOJ Statement of Interest submitted on February 10th. The DOJ maintains that a new highly-Latino district must be created in South Texas and as accused the Texas GOP map drawers of " purposeful discrimination' in their map drafting. Latino's are still pushing for a new Dallas-Ft. Worth combined Latino-African-American mixed minority-majority district. A hearing before the San Antonio Court is scheduled for today.

It is now unlikely that Texas will have legislative and congressional maps in place before mid late February at best. Consequently, the 2012 primary election, now rescheduled for April 3<sup>rd</sup>, is likely to be moved to an even later date, and the presidential and statewide office election could be separated from the other primary elections..

Because of all this confusion, it is difficult to predict how the two parties will fare as a result of redistricting, with the newly apportioned congressional seats splitting anywhere from 3R/1D to 1R/3D.

**Florida** (27 seats) -- Florida gained 2 seats in the 2010 reapportionment. The GOP controls the entire redistricting process, with the legislature redrawn by resolution (not subject to veto), and the congressional lines by statute. New maps have been enacted this month. The legislative maps must be approved by the State Supreme Court before they can be presented to DOJ and become enforceable.

Democrat-sponsored initiatives were passed by the voters in 2010 which impose criteria favoring compactness, adherence to county and city boundaries and strongly mandated racial and ethnic fairness which, of course, is already required by the federal Voting Rights Act. It also contained vague language forbidding the "intent to favor or disfavor a political party or an incumbent" which, of course, happens in any redistricting map.

The difficulty for the plan drafters is that the interplay between these factors is a difficult balance and, as of yet, has no court-tested standards. This makes the redistricting effort even more susceptible to litigation, which is exactly the intent of the Democrats who sponsored the initiatives.

Of the states still not enacted and precleared by DOJ, the national Democrats rate Florida as their number one target and can be expected to throw massive legal resources against the GOP. Their top litigation team will be involved, as well as their key expert witnesses. If they are successful, they could gain more new congressional seats in Florida than in any other state, including Illinois. The Democrats have

pledged to file suit against the GOP map in Florida's Supreme Court as soon as the bill is signed by the Governor.

At a minimum, is widely expected by many pundits that the Democrats will come out of the congressional process with a new seat in central Florida and increased opportunities to unseat a several

**Pennsylvania** (18 seats) – Pennsylvania lost one seat in the 2010 reapportionment. The Governor is a Republican and the GOP controls both legislative chambers and was, therefore, in control of the congressional line-drawing process. The legislature is redistricted by a commission and the GOP was able to come out of that process with a good legislative remap.

The GOP congressional remap was very aggressive, with the Democrats taking the hit on the lost seat and the GOP strengthening its margins in many of its present seats. The Democrats are clearly outraged, but threats of lawsuits are not likely to meet with success, although a Democratic suit challenging the legislative lines was successful in overturning the House and Senate maps. The 2012 elections will, by court order, be held using the old lines.

**Illinois** (18 seats) – Illinois lost one seat in the 2010 reapportionment. The Democrats were in complete control of both legislative and congressional line-drawing. In the last redistricting cycle Republicans and Democrats struck a deal, creating a bipartisan gerrymander. This time the Democrats went after GOP seats with a vengeance. The result is what many pundits are calling a 5-seat loss for the GOP, although GOP handicappers think the Democrats spread themselves too thin. This is the only state in this round of redistricting where the Democrats have control and were able to inflict major damage on the GOP. A GOP suit challenging the congressional maps has been dismissed.

**Ohio** (16 seats) – Ohio lost two seats in the 2010 reapportionment. The GOP controls both chambers of the Legislature and the Governor's Office giving it control of congressional redistricting. The Legislature is redrawn by a commission which was also GOP controlled. The GOP's legislative maps have strengthened its position in both chambers, and the Legislature enacted a congressional map which paired two incumbents from each party. The GOP map also made substantial improvements to a number of the GOP's weaker congressional seats.

The Democrats filed a referendum petition against the map, but failed to gather sufficient signatures to qualify it. A second "compromise" version of the map was enacted in mid-December, but the GOP has still consolidated its control of many of its districts. The compromise created a toss-up district which the GOP should be able to retain.

**Georgia** (14 seats) – Georgia gained one seat in the 2010 reapportionment. The GOP is fully in control and used the opportunity to draw a new GOP congressional seat and tighten control of other districts. Georgia's districts have been precleared under Section 5. Control of both chambers of the Legislature was also solidified.

**Michigan** (14 seats) – Michigan lost one seat in the 2010 reapportionment. The GOP is fully in control of line drawing. One Democrat seat was eliminated. The Michigan congressional and legislative maps have been precleared by DOJ.

**North Carolina** (13 seats) – Republicans took control of the Legislature in 2010 for the first time since 1870. Both the congressional and legislative districts have historically been heavily gerrymandered by the Democrats, and the GOP unraveled those gerrymanders in the 2011 remap. The partisan balance of the congressional map shifted from 6 GOP / 7 DEM to 10 GOP / 3 DEM. This will probably be the greatest seat gain for the GOP in any state. Republican majorities in both chambers of the Legislature were strengthened. North Carolina's remaps are subject to VRA preclearance but DOJ precleared the maps on November 1st. Two days after the plans were precleared; the Democrats filed lawsuits against all the maps in state court. On January 20<sup>th</sup>, a three-judge state panel ruled that the 2012 elections could proceed under the enacted legislative and congressional map. A trial still could be held to determine the validity of the maps under state constitutional provisions, but now has less possibility of success.

**New Jersey** (12 seats) – New Jersey lost 1 seat in the 2010 reapportionment. New Jersey's legislative lines were enacted earlier this year by the legislative commission with the tie-breaker favoring the Democratic map as happened ten years ago. The congressional commission, with a different tie-breaker, completed its work on December 22<sup>nd</sup>, leaving an incumbent from each party in the same district. The Republican, however, has a 4-point advantage over the Democrat who has announced he is running against another Democrat in another district.

**Washington** (12 seats) – Washington gained one seat in the 2010 reapportionment. Washington redistricts by commission, and had to complete its work on or before January 1, 2012. The Redistricting Commission completed its work on January 1<sup>st</sup> deadline. The new congressional seat, although called a toss-up by the Democrats, leans strongly Democrat.

**Virginia** (11 seats) – Virginia's Democrat-controlled State Senate and GOP-controlled House of Delegates were able to reach an agreement on the legislative remap, which needed to be completed in time for the 2011 legislative elections. It was not surprising that the senate map favored the Democrats and the house map favored the GOP. However, in the 2011 election, the GOP tied the State Senate and the GOP Lt. Governors tie-breaking vote gives the GOP control. There is serious talk of another redraw of the State Senate to shore up GOP control.

Congressional redistricting, which deadlocked earlier this year will now be controlled by the GOP which has enacted its favored GOP congressional plan. The one possible roadblock is that minority stakeholders have already publicly presented a possible congressional map containing two compact majority African-American districts, which present a threat to one of the present GOP-held districts. Since Virginia's maps must be precleared under Section 5 of the VRA, this remap might be more difficult to enact than expected.

The Democrats filed suit in a Richmond state court challenging the constitutionality of the newly enacted congressional map based on language which, to them appears to prevent a map being enacted after 2011. The Democrats, if successful, will then turn to the federal courts claiming a deadlock exists. Their first deadlock case filed in federal court was dismissed last week. There is a hearing before the Richmond state court this week.

**Arizona** (9 seats) – Arizona gained one seat in the 2010 reapportionment. Even though Arizona has a Republican governor and is in control of both legislative chambers; early on, the Democrats were able to attain functional control of the Arizona Independent Redistricting Commission, and the final result

reflects that control. In good election years, the GOP should be able to maintain control of both legislative chambers by small margins, but could lose control in a bad year. The new congressional map awards four solid seats to the GOP and two Hispanic seats to the Democrats. Of the three remaining seats, two lean somewhat Democratic and one is a true toss-up. The Arizona maps have been enacted and are being prepared for submission to DOJ for preclearance.

**Indiana** (9 seats) – Indiana’s legislative and congressional maps were enacted by statute and the GOP was in full control. Legislative majorities were strengthened and several congressional seats were made more vulnerable for the Democrats.

**Massachusetts** (9 seats) – Massachusetts lost one seat in the 2010 reapportionment. Since the Democrats fully control redistricting, and all Massachusetts’ members of Congress are Democrats, they took the hit on the lost seat.

**Tennessee** (9 seats) – For the first time ever, the GOP is in charge of redistricting. A draft congressional map was released on January 6th, with the GOP solidifying its hold on all the present GOP congressional seats and making the Democrat seat more “blue”. GOP incumbents. The GOP should still be able to increase its majorities in both chambers of the legislature. The legislative and congressional maps have been passed through the Legislature signed by the Governor’.

**Missouri** (8 seats) – Missouri’s legislative districts are supposed to be drawn by two separate commissions with an equal number of GOP and Democrat members. This year, however, both commissions deadlocked so the redistricting process was completed by a court-appointed panel. The panel released the new maps in early December. The GOP stakeholders were not happy with the draw, but will be able to hold their majorities in both chambers. On January 17, the Missouri State Supreme Court threw out the State Senate map and ordered the Commission to draft a new plan.

Missouri lost one seat in the 2010 reapportionment. Congressional redistricting is done by statute so the GOP controlled legislature needed to garner enough Democrat votes to override the Democratic governor’s veto of the pro-GOP plan. They were successful and the Democrats came out of the process with one less seat. A court case filed by the Democrats was dismissed by a lower state court, but the Democrats filed an appeal to the State Supreme Court which sustained the lower court on all but one count, lack of compactness, which was remanded back to the lower court for a trial, which was held on January 31st. The circuit court judge upheld the congressional map and a subsequent appeal is due for a February 17th hearing.

The House plan has also been challenged and a circuit court decision today upheld the plan. There will be an appeal.

**Maryland** (8 seats) – The Democrats are in complete control of redistricting and have already enacted a new congressional map which significantly weakens one of the GOP’s present districts. A lawsuit will was filed by African-American plaintiffs, but it was an uphill battle, which was dismissed by the federal court. An appeal is being filed.

**South Carolina** (7 seats) – South Carolina gained one seat in the 2010 reapportionment. Redistricting is fully controlled by the GOP. A new congressional map has been enacted and precleared by DOJ which creates one new GOP seat. The legislative plans have also been enacted and precleared by DOJ. Both

maps are favorable to the GOP. Litigation has resulted, but nearly all of the complaints have been dismissed.

**Colorado** (7 seats) – Colorado is a split control state, with the GOP only in control of one chamber of the legislature. Legislative redistricting is done by a commission, and the tie-breaking member is appointed by a very partisan Democratic State Supreme Court Chief Justice. It is no surprise, therefore, that the legislative redraw favored the Democrats. The congressional redistricting deadlocked in the legislature and a map was imposed by state court judge. As was the case in 2001, the Democrat map was accepted by the court. The result was that one GOP seat was shifted from the leaning GOP to fully competitive category.

**Louisiana** (6 seats) – Louisiana lost one seat in the 2010 reapportionment. Even though the GOP controlled both legislative and congressional line drawing, the GOP took the one-seat loss because the only Democrat seat in the State was protected from retrogression by the provisions of the Voting Rights Act. The GOP was able to shore up its razor-thin majorities in the Legislature.

**Connecticut** (5 seats) – This State's fallback redistricting commission deadlocked on December 21<sup>st</sup>, and that remap is headed to the State Supreme Court for resolution. The Court appointed master drew status quo maps for both chambers and congress. A GOP challenge to the congressional map has been rebuffed by the State Supreme Court.

**Utah** (4 seats) – This state gained one seat in the 2010 reapportionment. The GOP was in full control and took advantage of its opportunity to significantly weaken the one Democratic congressional seat and draw a 4-0 map for the GOP. The GOP has large majorities in the Legislature and drew favorable maps.

**Iowa** (4 seats) – Iowa lost one seat in the 2010 reapportionment. In Iowa, redistricting is guided by the Legislature's Legislative Service Bureau, which has up to three opportunities to present bills to the Legislature for up-or-down approval. If the Legislature does not like any of these maps, it can amend the third attempt and pass whatever lines it wishes. The plan enacted by the Legislature is subject to gubernatorial veto. This year the legislature accepted the first submission which was signed by the Governor. The GOP is happy with the new legislative maps.

The congressional map is constructed by a formula which mandates that the combination of contiguous counties containing the lowest possible deviation from the average district population must be selected. The new lines placed two incumbents together, but did not favor either party.

**Nevada** (4 seats) – Nevada gained one seat as a result of the 2010 reapportionment. Both the congressional and legislative remaps deadlocked, as the GOP governor refused to sign the plans submitted by the Democratic-controlled legislature. Three masters were selected to draft new plans, which were approved by the court. The GOP was pleased with the results, given the deadlock situation.

Both incumbent GOP members of Congress should be able to win re-election in their seats. The Democrat seat remains strong for them, and there is a new competitive seat.

**New Mexico** (3 seats) – The GOP scored a victory in court after redistricting deadlocked. The court imposed the GOP-favored least-changes congressional map just before the holidays and on January 4<sup>th</sup> the GOP prevailed in the selection of the state house map. The court has accepted a bi-partisan State map.

On February 10th, the New Mexico State Supreme Court threw out the House map because its population deviations were too low, splitting up communities of interest. The case has been remanded back to the lower court judge for a redraw.

**West Virginia** (3 seats) – West Virginia’s congressional map was just thrown out by a federal court for excessive population deviations between the districts. The Legislature enacted that map even through other whole-county plans with significantly lower deviations were presented and examined by the Legislature. The court has given the State until January 13<sup>th</sup> to enact a new compliant plan or it will impose an interim map for this year’s elections. The Democrats asked the U. S. Supreme Court for a stay of the lower court’s decision pending an appeal, which was granted. Elections will be held under the enacted map.

### **PLANS AWAITING ENACTMENT OR A REDRAW**

Of the states which are not yet enacted place, New York and Texas and Virginia are the most critical to the GOP’s success in the congressional remap; although all are important in terms of legislative redistricting. Texas, of course, still remains in play, but is discussed above – as is Virginia. There is, of course, Missouri’s congressional map, which is under attack in court for lack of compactness.

**New York** (27 seats) – New York lost 2 seats in the 2010 reapportionment. New York redistricts by statute, with a Democratic governor, a GOP-controlled State Senate and a Democrat-controlled Assembly. In the past several redistrictings, each chamber has crafted its map to its own benefit, while a compromise has been reached on the congressional lines. This could very well be the pattern this time except that the Governor has threatened vetoes if the plans don't meet his standards. Legislative action on redistricting should begin after the first of the year and only time will tell if the legislators and the Governor will strike a deal, with both parties losing one congressional seat. The razor-thin GOP majority in the State Senate is always difficult to preserve; and there is now some talk of adding one new seat to the Senate which might advantage the GOP. The Democrats have already filed a deadlock suit before a federal court in Brooklyn.

Three other states (Kansas, Minnesota, and New Hampshire) have the same number of congressional districts as before, and can be expected to have more or less status quo congressional redraws, but it is not entirely certain:

**Minnesota** (8 seats) – Special court masters have been appointed to draft the states plans as a result of a deadlock lawsuit. The Democrats want “communities of interest” redraws, which radically change the political landscape, while the GOP has closely followed the criteria used by the court last decade. A “least changes” congressional map is likely. A decision on the maps is expected this week.

**New Hampshire** (2 seats) – The GOP has majorities in both chambers of the legislature , but little change is expected in the congressional boundaries.

**Kansas** (4 seats) – The GOP is in full control of the redistricting process and should be able to solidify its position, although conflicts between GOP factions could harm passage of a strong GOP map.